

1 ROBERT H. NUNNALLY, JR. SBN 134151
2 robert@wnrlaw.com
3 WISENER NUNNALLY ROTH, LLP
4 245 Cedar Sage, Suite 240
5 Garland, Texas 75040
6 Telephone: (972) 530 2200
7 Facsimile: (972) 530 7200
8 Attorneys for CDK Global, LLC, successor in interest
9 to ADP Dealer Services, Inc.

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 SACRAMENTO DIVISION

13 Performance Chevrolet, Inc.,

14 Plaintiffs,

15 vs.

16 ADP Dealer Services, Inc.

17 Defendant.
18
19
20
21
22
23
24
25
26
27
28

: Case No.: 2:14-cv-02738-TLN-AC

:
: **COUNTERCLAIM BY ADP**
: **DEALER SERVICES, INC. NOW**
: **KNOWN AS CDK GLOBAL, LLC**

1 ADP Dealer Services, Inc., now known by the name of its successor-in-interest, CDK
2 Global, LLC, (“Defendant”) hereby respectfully submits its Counterclaim and shows:

3 1. CDK Global, LLC is the successor-in-interest to ADP Dealer Services, Inc.
4 Through corporate filings, ADP Dealer Services, Inc. changed its name to
5 CDK Global, LLC. CDK Global, LLC, formerly known as ADP Dealer
6 Services, Inc., brings this Counterclaim.

7 2. This Court has jurisdiction over this Counterclaim under its diversity
8 jurisdiction under 28 U.S.C. 1332. This Court also has jurisdiction over this
9 Counterclaim under its supplemental jurisdiction under 28 U.S.C. 1447.

10 As alleged in the Complaint, Performance is a California corporation with its
11 principal place of business in California. ADP Dealer Services, Inc. was a
12 Delaware corporation with its principal place of business in New Jersey. Its
13 successor-in-interest CDK Global, LLC is a Delaware limited liability
14 company with its principal place of business in Illinois. CDK Global, LLC’s
15 member is an entity both formed and resident outside the State of California.

16 3. Defendant and Performance Chevrolet, Inc. (“Performance” or
17 “Performance Chevrolet”) entered into a written agreement termed a Master
18 Services Agreement which is attached as Exhibit “A” and incorporated into
19 this Counterclaim by reference for all purposes.

20 4. Defendant and Performance Chevrolet further entered into written schedules,
21 addenda and amendments which are attached as Exhibit “B” and
22 incorporated into this Counterclaim by reference for all purposes.

23 5. Defendant complied with all covenants, conditions and terms of the
24 agreement(s) attached as Exhibits “A” and “B” to this Complaint.

25 Alternatively, Defendant’s compliance was excused by Performance’s non-
26 compliance with those agreements. Alternatively, Defendant complied with

1 all material covenants, conditions and terms of its agreement(s) attached as
2 Exhibits "A" and "B". Defendant has further complied with all conditions
3 precedent and covenants necessary for Defendant to maintain this
4 Counterclaim.

5 6. Performance Chevrolet breached the Master Services Agreement which is
6 Exhibit "A" and breached the schedules and addenda which are Exhibit "B"
7 to this Counterclaim.

8 7. Performance Chevrolet's breaches included, without limitation, the
9 following:

- 10 a. failure to pay all sums due under the agreement(s);
11 b. wrongful repudiation of the agreement(s);
12 c. termination of the agreement(s) without paying the early termination fees
13 required by the agreement(s);
14 d. interference with the performance by Defendant;
15 e. failure to cooperate with the installation of a dealer management system
16 at Performance's automobile dealership;
17 f. changing vendors to another vendor rather than following the provisions
18 of the Master Services Agreement; and
19 g. terminating the agreement without following the provisions of the
20 agreement pertinent to early termination.

21 8. Performance proximately caused damage to ADP Dealer Services, Inc.
22 (now CDK Global, LLC) through its breach of contract. This damage includes but is
23 not limited to:

- 24 a. sums due under the agreement(s) upon early termination as set forth in
25 Paragraph 16 of the Agreement, including an early termination fee, or
26 alternatively actual damages;

- b. attorneys' fees;
- c. costs of collection;
- d. pre-judgment interest;
- e. post-judgment interest; and
- f. costs of Court.

9. CDK Global, LLC, as successor-in-interest to ADP Dealer Services, Inc., now sues to recover the sums due. These sums due upon early termination are in the amount of \$ 295,639.36, plus attorneys' fees and costs of collection, pre-judgment interest, post-judgment interest, and costs of suit.

First Cause of Action: Breach of Contract

10. CDK Global, LLC realleges and incorporates herein paragraphs 1 through 9 of the Counterclaim. CDK Global, LLC sues Performance Chevrolet, Inc. for breach of the contract between them, and seeks:

- a. sums due under the agreement(s) upon early termination as set forth in Paragraph 16 of the Agreement, including an early termination fee of \$ 295,639.36, or alternatively actual damages;
- b. attorneys' fees;
- c. costs of collection;
- d. pre-judgment interest;
- e. post-judgment interest; and
- f. costs of Court, as well as all other just and equitable relief.

Second Cause of Action: Alternative Suit in Common Counts

11. This cause of action is brought in the alternative. Paragraphs 1 through 9 of the Counterclaim are incorporated herein by reference.

12. CDK Global, LLC asserts that it is entitled to recover on an express contract. In the alternative, if, for any reason, CDK Global, LLC cannot enforce its express

1 contract, then CDK Global, LLC files this alternative suit seeking to recover in
2 quantum meruit for the benefit it has conferred upon Performance Chevrolet, Inc., and
3 further seeks attorneys' fees, pre-judgment interest, post-judgment interest and costs,
4 as well as all other just and equitable relief.

5 **Request for Relief:**

6 Wherefore, premises considered, CDK Global, LLC seeks the following from
7 Performance Chevrolet, Inc:

- 8 a. sums due under the agreement(s) upon early termination as set forth in
9 Paragraph 16 of the Agreement, including an early termination fee of \$ 295,639.36, or
10 alternatively actual damages;
11 b. attorneys' fees;
12 c. costs of collection;
13 d. pre-judgment interest;
14 e. post-judgment interest; and
15 f. costs of Court, as well as all other just and equitable relief.

16
17 Respectfully submitted,

18 Dated: January 7, 2014

19 WISENER NUNNALLY ROTH, LLP

20 /s/ Robert H. Nunnally, Jr.

21 Robert H. Nunnally, Jr.

22 California SBN 134151

23 245 Cedar Sage, Suite 240

24 Garland, Texas 75040

25 (972) 530-2200

26 Fax: (972) 530-7200

27 E-mail: robert@wnrlaw.com

28 *Attorneys for Defendant ADP Dealer Services, Inc., now known as CDK Global, LLC*

PROOF OF SERVICE: By ECF
(Code Civ. Proc., ' ' 1013, 2015.5)

STATE OF TEXAS, COUNTY OF DALLAS.

I am employed in the County of Dallas, State of Texas. I am over the age of 18 and not a party to the within action; my business address is 245 Cedar Sage Drive, Suite 240, Garland, Texas 75040.

On this date, I served the foregoing document described as **Counterclaim by ADP Dealer Services, Inc. now known as CDK Global, LLC** by ECF as follows:

Sent via ECF to:

Jeffrey H. Ochrach, Esq.
Ochrach Law Group
Rocklin Professional Building
5701 Lonetree Blvd., Ste. 213

____ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (Federal) I declare that I am employed by the office of a member of the bar of this court at whose direction the service was made.

Executed on January 7, 2014 at Garland, Texas.



Michael Roth